

Communiqué

International Taxation

March 2026



Inside this edition

High Court Rulings

Non-Resident's Foreign Bank Deposits Not Taxable in India; Addition Deleted

ITAT Rulings

ITAT Deletes Section 94B Disallowance for Breach of Non-Discrimination Clause in India–Denmark DTAA

Operation of Digital Platform Outside India Precludes Fixed Place PE

Consideration for Title Process Services Not 'Royalty' under India–US DTAA: Delhi ITAT



High Court Rulings

Non-Resident's Foreign Bank Deposits Not Taxable in India; Addition Deleted

Facts

The assessee, is an individual and a non-resident Indian for the relevant assessment year. The assessment was reopened on the basis of information received from the French Government regarding deposits in an HSBC Bank account at Geneva. As the assessee had not filed a return of income and failed to furnish satisfactory evidence regarding the source of such deposits, the Assessing Officer treated the peak credit of USD 13,62,441/- (₹6,13,09,845/-) as unexplained income and completed the assessment under Section 143(3) read with Section 147 on 03.03.2015. On appeal, the CIT(A), by order dated 28.03.2016, deleted the addition. The Revenue's appeal before the ITAT was dismissed by a common order dated 19.06.2018 for Assessment Years 2006-07 and 2007-08. Aggrieved, the Revenue has challenged the ITAT's order, contending that the assessee failed to cooperate by not furnishing bank statements or consent waiver and that the existence of a foreign account linked to Indian beneficiaries establishes an economic nexus exigible to tax under Section 5(2) of the Act.

Ruling

In the present case, The Hon'ble bench upheld the orders of the ITAT and the CIT(A) deleting the addition made on account of alleged undisclosed foreign bank balance for Assessment Year 2006-07, holding the addition to be unsustainable in law. The Court held that the assessee, being a non-resident, could not be fastened with Indian tax liability merely on account of holding a foreign bank account, unless the conditions of taxability under the Act were satisfied. It was observed that the HSBC Bank account at Geneva was outside the purview of the Act, as no income accruing or arising in India, or deemed to accrue or arise in India, was established. The Court noted that the reopening was based on a base note received from the French Government regarding deposits in the said account, which was opened in 1997, at a time when the assessee had already been a non-resident since 1979 and continued to remain so thereafter. The High Court found that the four instances relied upon by the Assessing Officer as circumstantial evidence did not establish the source of deposits. Emphasizing the principle *ei qui affirmat incumbit probatio*, the Court held that the burden to prove taxability lies squarely on the Revenue. Relying on the Supreme Court decision in *Parimiseti Seetharamamma*, the Court held that the Revenue had failed to discharge this burden. The Court also concurred with the finding of the CIT(A) that the Act does not contemplate double taxation of the same income in the hands of the same or different assesseees. Accordingly, the appeal filed by the Revenue was dismissed.



Source : HC, Bombay in the case of CIT Vs Dipendu Bapalal Shah vide [TS-352-HC-2026(BOM)] on March 14, 2026



ITAT Rulings

ITAT Deletes Section 94B Disallowance for Breach of Non-Discrimination Clause in India–Denmark DTAA

Facts

The assessee, Vestas Wind Technology India Private Limited, a wholly owned subsidiary of Vestas Wind Systems A/S, Denmark, is engaged in manufacturing and supplying wind turbine generators and components in India and to group entities. From FY 2015-16, the Appellant availed multiple tranches of External Commercial Borrowings (ECBs) from its parent, and during AY 2018-19 incurred ECB interest of ₹55.83 crore. In its return filed on 30.11.2018, the Appellant declared total income of ₹71.26 crore after making a conservative suo motu disallowance of ₹9.34 crore under Section 94B, which was applicable for the first time. During scrutiny, the Transfer Pricing Officer, while making no arm's length price adjustment, recomputed the Section 94B disallowance at ₹18.47 crore by enhancing it by ₹9.13 crore on account of alleged computational errors relating to EBITDA and excess interest, without issuing a show-cause notice. The Assessing Officer adopted the enhanced disallowance in the final assessment order dated 15.11.2021 under Sections 143(3), 144C(3) and 144B. Although the ECB interest transaction was subsequently covered under a Bilateral Advance Pricing Agreement dated 22.01.2024 for FYs 2011-12 to 2019-20, including the impugned AY, the Commissioner of Income Tax (Appeals), by order dated 27.11.2024, upheld the applicability and computation of disallowance under Section 94B. Aggrieved, the Appellant has preferred the present appeal before the Tribunal disputing both the applicability of Section 94B and, without prejudice, the manner of its quantification, including on the ground of non-discrimination under Article 24 of the India–Denmark DTAA.

Ruling

The Hon'ble bench allowed the assessee's appeal, holding that the disallowance under section 94B of the Act is discriminatory and unsustainable as it violates the non-discrimination clause under Article 24(4) of the India–Denmark DTAA read with section 90(2) of the Act. Consequently, the Tribunal directed deletion of the entire disallowance of ₹18.47 crores. The Tribunal noted that Article 24(4) mandates equal deductibility of interest paid to residents and non-residents, except where Article 12(7) applies. *Relying on the OECD Commentary and judicial precedents including Herbalife International India Pvt. Ltd., Mitsubishi Corporation India, Cognizant Technology Solutions India Pvt. Ltd. and LinkedIn Technology Information Pvt. Ltd., the Tribunal observed that section 94B applies only where debt is from a non-resident associated enterprise, with no similar restriction for borrowings from resident AEs, thereby resulting in differential treatment based solely on residence.* The Tribunal rejected the Revenue's reliance on Article 12(7), holding that the said Article applies only to excess interest arising from deviation from the arm's length principle. Since the TPO had accepted the arm's length nature of the interest and no transfer pricing adjustment was made, and as the disallowance arose solely due to an EBITDA-based limitation, Article 12(7) was held to be inapplicable. The Tribunal further observed that in the absence of a specific treaty carve-out permitting thin capitalization rules, such provisions when applied exclusively to non-residents violate Article 24(4) of the DTAA.

Source : ITAT, Chennai in the case of Vestas Wind Technology India Private Limited vs ITO vide [TS-377-ITAT-2026(CHNY)] on March 9, 2026



Operation of Digital Platform Outside India Precludes Fixed Place PE

Facts

The assessee, a Netherlands tax resident, did not file its return of income for AY 2018-19. The case was selected for assessment under the Insight system for non-filing of return based on AIR/Form 26AS data reflecting various transactions during FY 2017-18, including commission receipts and payments to non-residents. Reassessment proceedings were initiated under sections 148A/148 of the Act. The assessee subsequently filed a nil return and claimed that the commission income earned from Indian hotels through its online reservation platform was not chargeable to tax in India, as it acted only as an intermediary, the platform and servers were located outside India, and tax obligations were contractually placed on the accommodation providers. During proceedings, the assessee disclosed commission income of ₹3,96,09,81,782 from India. The Assessing Officer proposed addition of the said amount, which was upheld by the DRP, and a final assessment order was passed making the addition. Aggrieved, the assessee filed an appeal before the Tribunal.

Ruling

In the present case, The Delhi ITAT allowed Booking.com B.V.'s appeal, holding that the Revenue failed to establish the existence of a fixed place permanent establishment (PE) in India. The Tribunal observed that the assessee operates its online reservation platform through servers located outside India and has no place of business, employees, agents or equipment in India. Relying on the Supreme Court decisions in Formula One World Championship and eFunds IT Solutions, the Tribunal held that mere allegations without evidence do not satisfy the conditions for constituting a fixed place PE. It was further held that the assessee transacts with Indian accommodations on a principal-to-principal basis and does not have dependent agents in India. The Tribunal also held that the Significant Economic Presence provisions were inapplicable for the relevant year and, in any event, do not override treaty provisions. Consequently, no part of the commission income was taxable in India.



Source : ITAT, Delhi in the case of BOOKING.COM B.V. vs ACIT, vide [TS-281-ITAT-2026(DEL)] on February 6, 2026

Consideration for Title Process Services Not 'Royalty' under India-US

DTAA: Delhi ITAT

Facts

The brief facts are that the assessee, a US-based company, provides title process services and captive business development/marketing support services to its Indian group entity. During the relevant year, it received ₹7.73 crore towards title process services and ₹28.45 crore towards marketing support services, which were not offered to tax in India in view of the India-US DTAA. The Assessing Officer held that the title process service receipts constituted "royalty" under Article 12(3) of the DTAA and that marketing support service receipts amounted to Fees for Included Services under Article 12(4)(b). The DRP upheld the proposed additions and the final assessment order was passed accordingly. The assessee appealed, contending that it merely provided access to third-party databases containing publicly available information without transferring any technology or know-how, and that the marketing support services did not "make available" any technical knowledge or skill so as to be taxable in India.

Ruling

The Hon'ble Tribunal allowed the appeal of Coforge BPS America Inc., holding that payments received for title process services do not constitute "royalty" under section 9(1)(vi) of the Act or Article 12(3) of the India-US DTAA in the absence of any transfer of commercial or technical experience. The Tribunal observed that the assessee merely extracted relevant data from publicly available sources and provided the same to its Indian AE, without sharing any proprietary methodology, technical process, expertise, or know-how. It was held that the Indian AE independently used such data to prepare reports and that the assessee's role was limited to facilitating access to information. Accordingly, the essential condition of "use or right to use" intellectual property or transfer of commercial experience for taxation as royalty remained unsatisfied. The Tribunal clarified that "commercial experience" implies transfer of specialized knowledge enabling independent application by the recipient, which was absent in the present case. As the Revenue failed to place any evidence showing such transfer, the Tribunal concluded that mere access to information, without conferring rights in the underlying content or imparting technical knowledge, does not fall within the ambit of royalty, and consequently allowed the assessee's appeal.

Source : ITAT, Delhi in the case of Coforge BPS America Inc. vs ACIT, vide [TS-446-ITAT-2026(DEL)] on March 9, 2026



Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

Follow us on    

For any further assistance contact our team at kmt@vkalra.com

© 2026 Verendra Kalra & Co. All rights reserved.

This publication contains information in summary form and is therefore intended for general guidance only. It is not a substitute for detailed research or the exercise of professional judgment. Neither VKC nor any member can accept any responsibility for loss occasioned to any person acting or refraining from actions as a result of any material in this publication. On any specific matter, reference should be made to the appropriate advisor.

